(3)

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. 04-426

IN THE
SUPREME COURT OF THE UNITED STATES

THE GARTER BELT, INC., a
Michigan corporation, d/b/a Legg's Lounge

Petitioner,

v.

CHARTER TOWNSHIP OF VAN BUREN,
a Michigan municipal corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MICHIGAN

REPLY TO BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

I. **WHETHER THE MICHIGAN APPELLATE COURTS ERRED IN APPLYING RATIONAL BASIS SCRUTINY TO DETERMINE THE CONSTITUTIONALITY OF RESPONDENT TOWNSHIP'S ORDINANCE 02-16-99(2) DESIGNED TO RESTRAIN EXPRESSIVE DANCE OR SPEECH?**

II. **WHETHER THE MICHIGAN APPELLATE COURTS ERRED IN DETERMINING THAT RESPONDENT TOWNSHIP'S ORDINANCE 02-16-99(2) WAS NOT UNCONSTITUTIONALLY INVALID FOR OVERBREADTH AND VAGUENESS AND REQUIRED UNACCEPTABLE GOVERNMENTAL INVOLVEMENT?**

III. **WHETHER THE MICHIGAN APPELLATE COURT'S AFFIRMATION OF THE TRIAL COURT'S PERMANENT INJUNCTION CONSTITUTED PRIOR RESTRAINT, CONTRARY TO THE FIRST AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION?**

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INTRODUCTION

REQUEST THAT RESPONDENT'S BRIEF BE STRUCK IN WHOLE OR IN PART AND RESPONDENT'S REQUEST TO LODGE DOCUMENTS WITH THE CLERK'S OFFICE BE DENIED

On October 27 and 28, 2004, before filing its Brief in Opposition, Respondent filed with this Court two letters asking that certain documents be "lodged with the clerk's office" in connection with this case. (App 1a-3a). The documents were purportedly "certified copies of Michigan state court criminal records relating to crimes that have occurred on the premises of Garter Belt, Inc., d/b/a Legg's Lounge." In addition, Respondent included copies "of several planning studies filed in related state court litigation." On October 29, 2004, Respondent filed its Brief in Opposition referencing these documents. The proposed documents were never part of the state court record, were never admitted into evidence in any state court proceeding regarding this litigation and were never presented to or considered by Respondent's Board of Trustees when considering adoption of the instant ordinance.

The "several planning studies", submitted by Respondent, relate to Bronco Entertainment, Ltd, et al v. Charter Township of Van Buren, et al, 99-70197, United States District Court for the Eastern District of Michigan regarding Respondent's approval procedures for "adult" businesses and the zoning ordinances related thereto.[1]

In the Bronco litigation, Gary Wilson, an employee of McKenna Associates, Inc., was deposed. Documents marked "Exhibit 10" and "Exhibit 11" are letters of solicitation to

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1. Bronco Entertainment Ltd. was dismissed by the District Court appealed to the Sixth Circuit and remanded by the Sixth Circuit in an unpublished opinion (App 7a)

Michigan townships and cities. Document "Exhibit 17" is a synopsis of federal and state case law and secondary effects studies with primary emphasis on recommendations as to how Respondent can change its zoning requirements so as to eliminate or restrict new sexually oriented businesses. It is silent as to the intended recipient. All three documents are hearsay and none of the documents were reviewed or considered by Respondent's Board of Trustees when considering adoption of the instant ordinance.

Cindy King, a member of the Board of Trustees, Township Supervisor and former Clerk (App 16a-81a), testified that no studies of any kind were reviewed by the Board in connection with the adoption of the ordinance in question. She testified that no one provided information to the Board of Trustees relative to the adoption of the ordinance in question. She stated that there were no discussions as to how requiring a fully opaque covering of the female breasts would affect crime in Van Buren Township. She stated that she knew of no complaints regarding Petitioner's business or the fact that it engaged in adult entertainment. Ms. King testified that the only discussion was updating the master plan "to account for new growth within the community." and that the adoption of the sexually oriented business ordinances, which includes the ordinance in question, was "essentially a ministerial function of updating the ordinances." (App 73a-75a)

Joanie Payne is Clerk of Respondent Township and prior to election as Clerk was Deputy Clerk. Other than knowledge as to the nature of Petitioner's business, she was unaware of the Board of Trustees discussing Petitioner's business. She stated that she personally was unaffected by Petitioner's business and was unaware of any person in the community that had any specific problems with Petitioner's business. She heard no one approach the Board about Petitioner in a public forum and complain about crime or diminishing property values. (App 82a) She testified that she is unaware of "any studies on the effect of adult entertainment within the Township" (App 125a) or studies

regarding property values.

Respondent, in its brief, on page 13, writes as follows:

> The Township thoroughly investigated the adverse secondary effects of nudity on liquor-licensed premises before adopting its ordinance. It examined several reports and memoranda from its planner, McKenna Associates, Inc.

This statement is untrue as per the only testimony offered in evidence by any member of Respondent's Board of Trustees.

On page 14 of its Brief in Opposition, Respondent wrote:

> This history of adverse secondary effects from the existence of a topless bar in which nudity is allowed, in part, prompted the Township to adopt its ordinance. Thus, this argument provides no basis for granting the petition.

As per Ms. King and Ms. Payne, this statement is untrue.

In a footnote to this paragraph, Respondent wrote:

> In addition respondent is prepared to lodge with the clerk's office, official court records demonstrating convictions for illicit activities in the very premises at issue here. Thus, as to these premises, the Township can, not only rely on secondary effects as studied by other jurisdictions, but as evidenced by a series of criminal convictions for conduct on the premises. In addition, respondent has requested to lodge with the clerk's office three studies from the township's planner that demonstrate adverse secondary effects.

The criminal offenses relate to convictions in 2004, almost a year after the Court of Appeals had rendered its written opinion and nearly 5 years after the ordinance had been adopted. Except to potentially prejudice this Court, the criminal convictions are irrelevant and obviously were not a consideration when Respondent adopted the ordinance in question.

Under Michigan law, appellate review is limited to the record developed in the trial court. Kent County Aeronautics Bd v. Dept of State Police, 239 Mich App 563, 609 NW 2d 593 (2000). Exhibits not offered to the trial court are not part of the record on appeal. Dora v. Lesinski, 351 Mich 579; 88 NW 2d 592 (1958). Accordingly, the documents are not part of the Michigan Appellate record. If certiorari is granted, review by this Court is limited to the record presented in the state courts. Meat Cutters v. Jewel Tea, 381 U.S. 676, 694 (1965). Also see Tennessee Coal v. Muscoda Local, 321 U.S. 590 (1944).

In Bachellar v. Maryland, 397 U.S. 564, 566 (1970), this Court, citing Cox v. Louisana, 379 U.S. 536, 545 n. 8 (1965), stated that where Petitioners argued that their conduct was constitutionally protected, "we have examined the record for ourselves. When a 'claim of constitutionally protected right is involved, it remains our duty *** to make an independent examination of the whole record.'" This does not include hearsay never offered.

Respondent's attempt to misrepresent the record below and to offer documents from other litigation was intentional and Petitioner asks this Court to strike Respondent's Brief, in part or in whole, return the documents and grant such other relief as the Court deems proper.

I. WHETHER THE MICHIGAN APPELLATE COURTS ERRED IN APPLYING RATIONAL BASIS SCRUTINY TO DETERMINE THE CONSTITUTIONALITY OF RESPONDENT TOWNSHIP'S ORDINANCE 02-16-99(2) DESIGNED TO RESTRAIN EXPRESSIVE DANCE OR SPEECH?

Respondent, in its Brief in Opposition, writes that Ordinance § 6-69 is:

> a content neutral regulation since it prohibits nudity on all licensed premises. As such, any constitutional challenges leveled at the

> Township's ordinance are properly considered under the relaxed rational basis standard. Analysis should also take into account a state's right to regulate liquor.

Respondent cites no authority for this statement because it is contrary to existing federal law.

In a recent decision by the 7th Circuit, Joelner Fish v. Village of Washington Park, 378 F. 3d 613 (7th Cir 2004), the court wrote:

> Regulations which directly circumscribe a certain category of speech are subject to strict scrutiny and are likely to be constitutionally impermissible. See, e.g., R.A.V. v. City of St. Paul, 505 U.S. 377, 382 (1992); [City of] Renton [v. Playtime Theatres, Inc., 475 U.S. 41, 47 (1986)], 475 U.S. at 47; Stromberg v. California, 283 U.S. 359, 368-69 (1931). But the First Amendment tolerates governmental interference with general categories of expressive conduct, as opposed to actual speech. Schultz [v. City of Cumberland, 228 F. 3d 831, 845 (7th Cir. 2000)], 228 F. 3d at 841. Very generally, whether conduct regulations will be subject to intermediate or strict scrutiny most often actually hinges upon the regulation's intended purpose, rather than some strained interpretation of content-neutrality. See Ben's Bar [Inc v. Vill. of Somerset, 316 F. 3d 702, 707 (7th Cir. 2003)] 316 F. 3d at 723; Schultz, 228 F. 3d at 845 ("[C]ourts often called [regulations] content-neutral without explaining that [they] are in fact content-based and only analyzed as content-neutral when certain preconditions are met.")
>
> There are two distinct, yet overlapping, lines of Supreme Court jurisprudence addressing the degree of First Amendment protection afforded

to adult entertainment, a particular type of expressive conduct. Ben's Bar, 316 F. 3d at 712-13. One group of cases addresses public indecency regulations. See Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991); City of Erie v. Pap's A.M. 529 U.S. 277 (2000). The other considers adult entertainment zoning ordinances. See Young v.Am. Mini Theatres, Inc. 475 U.S. 41 (1986); City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002). However, the analytical framework underpinning both strains of jurisprudence is rooted in United States v. O'Brien, 391 U.S. 367, 376-87 (1968). Ben's Bar, 316 F. 3d at 714. Consequently, the Supreme Court has held that the distinctions between the test used to assess the constitutionality of public indecency statutes...and that used to evaluate adult entertainment zoning ordinances...are irrelevant.

* * *

A restriction placed upon the number of adult entertainment outlets is constitutional if:
(1) the State is regulating pursuant to a legitimate governmental power; (2) the regulation does not completely prohibit adult entertainment; (3) the regulation is aimed not at the suppression of expression, but rather at combating the negative secondary effects caused by adult entertainment establishments; and (4) the regulation is designed to serve a substantial government interest, [is] narrowly tailored, and reasonable alternative avenues of communication remain available....
Id. at 722 (citations omitted). Step four encapsulates the intermediate standard of scrutiny applicable in First Amendment challenges to adult entertainment regulations, See, e.g., Renton, 475

> U.S. at 47; AMT, 427 U.S. at 61. However, if a regulation fails to satisfy either steps two or three, strict scrutiny applies and, in order to be constitutional, the statute must be "necessary to serve a compelling state interest and be narrowly drawn to achieve that end." Schultz, 228 F. 3d at 848 (citing Simon & Schuster, Inc. v Members of the N.Y. State Crime Victims Bd., 502 U.S. 105 (1991).

This Court and every Circuit has held the standard of review is either strict scrutiny or intermediate scrutiny. The Michigan Court of Appeals in direct conflict with the decisions of this Court, adopted the lesser standard of rational basis.

Respondent argues that analysis of this ordinance is controlled by California v. LaRue, 409 U.S. 109 (1972) and the Twenty-first Amendment. In 44 Liquormart, Inc. v. Rhode Island, 517 U.S. 464, 516 (1996), Justice Stevens, writing for the majority, stated:

> without questioning the holding in LaRue, we now disavow its reasoning insofar as it relied on the Twenty-first Amendment. As we explained in a case decided more than a decade after LaRue, although the Twenty-first amendment limits the effect of the dormant Commerce Clause on a State's regulatory power over the delivery or use of intoxicating beverages within its borders, "the Amendment does not license the States to ignore their obligations under other provisions of the constitution." Capital Cities Cable, Inc. v. Crisp, 467 U.S. 691, 712 (1984). That general conclusion reflects our specific holdings that the Twenty-first Amendment does not in any way diminish the force of the Supremacy Clause, ibid; California Retail Liquor Dealers Assn v. Midcal Aluminum, Inc., 445 U.S. 97, 112-114 (1980), the Establishment clause, Larkin v. Grendel's

> Den, Inc., 459 U.S. 116, 122, n. 5 (1982), or the Equal Protection Clause, Craig v. Boren, 429 U.S. 190, 209 (1976). We see no reason why the First Amendment should not also be included in that list. Accordingly, we now hold that the Twenty-first Amendment does not qualify the constitutional prohibition against laws abridging the freedom of speech embodied in the First Amendment.

The Michigan Court of Appeals and Respondent reject Justice Stevens' reasoning and conclude that the Twenty-first Amendment gives Respondent authority to diminish the protections of the First Amendment.

As stated in the Introduction, Respondent claims, now for the first time, that it "thoroughly investigated adverse secondary effects." No studies were conducted, no reports issued, no studies of other communities considered. The trial court held that in the absence of such evidence, Respondent's Board of Trustees could use "common sense" and the Michigan Court of Appeals agreed.

In City of Los Angeles, supra, Justice O'Connor wrote as follows:

> In Renton, we specifically refused to set such a high bar for municipalities that want to address merely the secondary effects of protected speech. We held that a municipality may rely on any evidence that is "reasonably believed to be relevant" for demonstrating a connection between speech and a substantial, independent government interest. 475 U.S. at 51-52; see also, e.g., Barnes v. Glen Theatre, Inc., 502 U.S. 560, 584 (1991) (Souter, J., concurring in judgment) (permitting municipality to use evidence that adult theaters are correlated with harmful secondary effects to support its claim that nude dancing is likely to produce the same effects). **This is not to say that**

> **a municipality can get away with shoddy data or reasoning. The municipality's evidence must fairly support the municipality's rationale for its ordinance.** If plaintiffs fail to case direct doubt on this rationale, either by demonstrating that the municipality's evidence does not support its rationale or by furnishing evidence that disputes the municipality's factual findings, the municipality meets the standard set forth in Renton. If plaintiffs succeed in casting doubt on a municipality's rationale in either manner, the burden shifts back to the municipality to supplement the record with evidence renewing support for a theory that justifies its ordinance. See, e.g., Pap's A.M., supra. (Emphasis added.)

In this case, Respondent had no evidence to support adoption of the ordinance.

In this case, under the ordinance as written, government entanglement is extensive. The "pastie" must cover "one-half of the area of the breast" including the nipple. This requires law enforcement officers to carry tape measures. Dancers are prohibited from wearing "Daisy Mae" shorts that are permissible to be worn on public streets.

II. WHETHER THE MICHIGAN APPELLATE COURTS ERRED IN DETERMINING THAT RESPONDENT TOWNSHIP'S ORDINANCE 02-16-99(2) WAS NOT UNCONSTITUTIONALLY INVALID FOR OVERBREADTH AND VAGUENESS AND REQUIRED UNACCEPTABLE GOVERNMENTAL INVOLVEMENT?

The ordinance in question is close to, if not a total ban, on semi-nude dancing, by male or female. Contrary to Respondent's assertion that the "instant ordinance cannot be read so broadly as to permit non-nude performances as the one in J.L. Spoons [v. O'Connor, 194 F.R.D. 589 (ND Ohio 2000)]", because the ordinance does not distinguish between male and female breasts,

a dinner club with liquor license would be prohibited from performing Lil' Abner because the men are shirtless.

The Michigan Court of Appeals, in its decision, stated that it was bound by its decision in Jott, Inc. v. Charter Township of Clinton, 224 Mich App 513 (1997). However, the Michigan Court of Appeals did not address, in Jott, the unfettered discretion to arrest to law enforcement officers and does not address the "de minimis" clothing limitation set forth in Pap's. The ordinance is overly broad and vague.

III. WHETHER THE MICHIGAN APPELLATE COURT'S AFFIRMATION OF THE TRIAL COURT'S PERMANENT INJUNCTION CONSTITUTED PRIOR RESTRAINT, CONTRARY TO THE FIRST AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION?

In Hill v. Colorado, 530 U.S. 730 (2000), this Court stated that "prior restraint" concerns relate to restrictions imposed by official censorship. Official censorship is at issue in this case. The ordinance in question enables Respondent, contrary to Promotions, Ltd v. Conrad, 420 U.S. 546, 553 (1973), "the power to deny the use of a forum in advance of actual expression." Respondent argues that even as to prior restraint, the appropriate standard is rational basis instead of strict scrutiny, as set forth in Schultz, supra.

The Michigan Court of Appeals, and by denial of leave, the Michigan Supreme Court, found semi-nude dancing to be obscene. Therefore, prior restraint was not an issue.

Respondent did not use "shoddy reasoning", it used no reasoning. The trial court, in the absence of evidence, adopted a "common sense test", which the Michigan Appellate Courts affirmed.

Dated: 11/8/04

Michael L. Donaldson
Attorney for Petitioner

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October 27, 2004

Mr. William K. Suter, Esq.
Chief Clerk
Supreme Court of the United States
1 First Street N.E.
Washington, D.C. 20543

Re: Garter Belt, Inc. v. Charter Township of Van Buren
Docket No. 04-426

Dear Mr. Suter:

Enclosed are certified copies of Michigan state court criminal records relating to crimes that have occurred on the premises of Garter Belt, Inc., d/b/a Leggs Lounge. Also enclosed is a copy of several planning studies filed in related state court litigation.

They are lodged with the clerk's office in connection with the pending petition for a writ of certiorari filed by Garter Belt, Inc., v. Charter Township of Van Buren, Docket No. 04-426.

Thank you for your assistance in this matter.

Sincerely,

Sincerely,

Maura Massaro Ross

Mary Massaron Ross
Direct Dial (313) 983-4801
E-mail: mmassaron@plunkettcooney.com

MMR/cw
Enclosures
cc: Michael L. Donaldson, Esq.
Patrick McCauley, Esq.

PLUNKETT
COONEY

October 28, 2004

Mr. William K. Suter, Esq.
Chief Clerk
Supreme Court of the United States
1 First Street N.E.
Washington, D.C. 20543

Re: Garter Belt Inc. v. Charter Township of Van Buren
Docket No. 04-426

Dear Mr. Suter:

Respondent Van Buren Township requests consent to lodge various materials with the clerk's office in connection with the pending petition for a writ of certiorari filed by Garter Belt, Inc. v. Charter Township of Van Buren, docket No. 04-426. (We sent earlier correspondence to lodge th documents not realizing the change in procedure. Please allow this letter to substitute for our correspondence of yesterday.)

The materials include certified copies of Michigan state court criminal records relating to crimes that have occurred on the premises of Garter Belt, inc., d/b/a Legg's Lounge. The specific records are:

- Complaint
- Bind Over/Transfer After Preliminary Examination Felony
- Order of Conviction & Sentence (Charles Drayer)
- Order of Probation Misdemeanor (Charles

Drayer)

- Order of conviction & Sentence (John Allen-Lee Tomason)
- Order of Probation Misdemeanor (John Tomason)
- Order of Conviction & Sentence (Roger Thompson)
- Order of Probation Felony (Roger Thompson)
- Order of Conviction & Sentence (Billy Ray Martin)
- Order of Probation Felony (Billy Ray Martin)
- Order of Conviction & Sentence (James Frasure)
- Order of Probation Felony (James Frasure)
- Order of Conviction & Sentence (Bobby Dean Martin)
- Order of Probation Felony (Bobby Dean Martin)
- Order of Conviction & Sentence (Chester Hill)
- Order of Probation Misdemeanor (Chester Hill)
- Order of Conviction & Sentence (Roger Brown)
- Order of Probation Felony (Roger Brown)

In addition, respondent proposes to lodge with the clerk's office a copy of several planning studies filed in related state court litigation. They include:

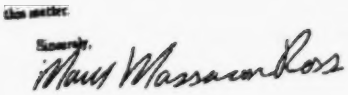
- McKenna Associates, Inc. Report, dated 12/16/98
- McKenna Associates, Inc. Memorandum, dated 1/6/98
- McKenna Associates, Inc. Memorandum, dated 1/20/98

These are matters as to which this Court can take judicial notice because they are part of the official records of state court proceedings. Fed. R. Evid. 201. These non-record materials provide the Court with important background material which

demonstrate that the petition should be denied in this case because the ordinance is a valid police power measure to reduce or eliminate the adverse effects of nudity on these and other liquor-licensed premises.

Thank you for your assistance in this matter.

Sincerely,



Mary Massaron Ross
Direct Dial (313) 983-4801
E-mail: mmassaron@plunkettcooney.com

MMR/cw

cc: Michael L. Donaldson, Esq.
Patrick McCauley, Esq.

IN THE
SUPREME COURT OF THE UNITED STATES

THE GARTER BELT, INC. a Michigan Corportation d/b/a Legg's Lounge,
Petitioner,

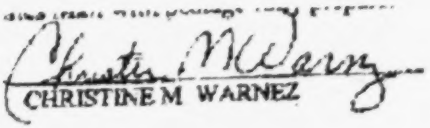
v.

CHARTER TOWNSHIP OF VAN BUREN,
a Michigan Municipal Corporation,
Respondent.

On the Petition For Writ of Certiorari
To the Court of Appeals of the
State of Michigan

CERTIFICATE OF SERVICE

CHRISTINE M. WARNEZ, says that on October 28, 2004, a copy of the October 28, 2004 letter requesting consent to lodge materials with the U.S. Supreme Court, was served on Michael Donaldson, Attorney for Petitioner, 31564 Schoolcraft Road, Livonia, MI 48150, by depositing same in the United States Mail with postage fully prepaid.



CHRISTINE M. WARNEZ

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

29 Fed. Appx. 310; 2002 U.S. App. LEXIS 2064

February 5, 2002, Filed

BRONCO'S ENTERTAINMENT, LTD., a Michigan Corporation, and RAWSONVILLE LAND CO., INC., a Michigan Corporation, Plaintiffs-Appellants,

v. **No. 00-2181**

CHARTER TOWNSHIP OF VAN BUREN, a Michigan Local Unit of Government, the MICHIGAN LIQUOR CONTROL COMMISSION, a State Agency, and the Commission's Chairwoman, JACQUELYN STEWART, Defendants-Appellees.

NOTICE: [**1] NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. SIXTH CIRCUIT RULE 28(g) LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 28(g) BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED.

PRIOR HISTORY: ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN. 99-70197. O'Meara. 09-06-00.

DISPOSITION: Order of dismissal REVERSED, and case REMANDED to district court for further proceedings not inconsistent with this opinion.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiffs, who planned to open a topless bar, brought a civil rights action against defendant township and the Michigan Liquor Control Commission, for blocking the project in alleged violation of the First and Fourteenth Amendments. Concluding that plaintiffs lacked standing to sue, the United States District Court for the Eastern District of Michigan dismissed the case. Plaintiffs appealed.

OVERVIEW: On review, the court noted that the question of plaintiffs' standing had three aspects: standing to challenge the township's licensing ordinance, standing to challenge the township's zoning ordinance, and standing to challenge the commission's refusal to transfer the liquor license. Plaintiffs claimed that the licensing ordinance vested unbridled discretion in a government official. And although plaintiffs did not presently own a topless bar within the township, no one disputes their intention to open one; indeed, they had expended considerable sums to retain the option to purchase land in the township for that purpose. As plaintiffs were subject to the licensing requirements, they had standing to challenge the ordinance. The court held that, by the same token, plaintiffs had standing to challenge the zoning ordinance. Lastly, the court held that they had standing to sue the commission. The commission had admittedly postponed its approval of the liquor license transfer, and this postponement constituted an "injury in fact."

OUTCOME: The order of dismissal was reversed, and the case was remanded to the district court.

LexisNexis(R) Headnotes

Civil Procedure > ***Justiciability*** > ***Standing***
[HN1] To demonstrate standing to sue in federal court, under

Article III of the Constitution, a plaintiff must demonstrate that (1) it has suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Civil Procedure > Justiciability > Standing
[HN2] If the plaintiff does not have standing to sue, a federal court has no jurisdiction to hear the plaintiff's case.

Civil Procedure > Justiciability > Standing
[HN3] Standing is not dispensed in gross.

Civil Procedure > Justiciability > Standing
[HN4] When a licensing statute allegedly vests unbridled discretion in a government official, one who is subject to the law may challenge it facially without the necessity of first applying for, and being denied, a license.

Civil Procedure > Justiciability > Standing
[HN5] Owners of an interest in property on which they intend to open a topless bar have standing to challenge zoning restrictions to which the property is subject.

COUNSEL: For BRONCO'S ENTERTAINMENT, LIMITED, RAWSONVILLE LAND COMPANY, INCORPORATED, Plaintiffs - Appellants: Robert D. Horvath, Troy, MI.

For TOWNSHIP OF VAN BUREN, Defendant - Appellee: Patrick B. McCauley, Patrick J. Burkett, David J. Szymanski, Carl B. Downing, Sommers, Schwartz, Silver & Schwartz, Southfield, MI.

For MICHIGAN LIQUOR CONTROL COMMISSION,

Defendant - Appellee: Jerold Courtney Smith, Department of Attorney General, Farmington, MI.

For MICHIGAN LIQUOR CONTROL COMMISSION, JACQUELYN STEWART, Defendants - Appellees: Linda P. McDowell, Department of Attorney General, Farmington, MI.

JUDGES: Before: [**2] JONES, NELSON, and DAUGHTREY, Circuit Judges.

OPINIONBY: DAVID A. NELSON

OPINION: [*311]

DAVID A. NELSON, Circuit Judge. The plaintiffs, who plan to open a topless bar in the Charter Township of Van Buren, Michigan, brought the instant civil rights action against the township and the Michigan Liquor Control Commission for blocking the project in alleged violation of the First and Fourteenth Amendments. Concluding that the plaintiffs lacked standing to sue, the district court dismissed the case for "lack of justiciability and want of a legally cognizable case or controversy." This was error, in our view. The dismissal will be reversed, and the case will be remanded for further proceedings.

I

In August of 1998 the sole shareholder of the plaintiff corporations, Richard Skinner, obtained an option to purchase a parcel of land that fronts on a service road for Interstate 94 in Van Buren Township, Michigan. The land was zoned for commercial use. Mr. Skinner's purpose in taking the option was to obtain a site for the operation of a bar staffed by partially nude females -- a type of business in which Skinner was already engaged at several other locations in the Detroit area. Mr. Skinner also entered [**3] into a contract to acquire a liquor license, subject to regulatory approval, with a view to selling

alcoholic beverages in the new establishment.

By letter dated October 23, 1998, an attorney for the plaintiffs informed the Van Buren Township Supervisor of Mr. Skinner's plans. The letter also noted the plaintiffs' belief that the township's approval procedures for "adult" businesses violated the First Amendment. n1

n1 An unpublished 1996 Michigan Court of Appeals decision, *BRK, Inc. v. Charter Township of Van Buren*, Nos. 163835, 170704, declared that Van Buren's special use approval procedure for adult entertainment establishments was unconstitutional.

The township replied that on September 1, 1998, it had instituted a 182-day ban on the acceptance of new site plans. The stated purpose of the moratorium was to provide time for revising the township's licensing and zoning ordinances. The plaintiffs were told that the township would not review any site plan for the proposed topless bar until the moratorium [**4] had expired. The township further advised that it intended to review all future submissions under whatever revised ordinances were in place at the end of the 182-day period.

[*312] The plaintiffs insisted on immediate consideration of their plan. An exchange of letters failed to resolve the parties' differences, and in January of 1999 the plaintiffs brought the present lawsuit against the township and the Michigan Liquor Control Commission. (The Commission was joined as a defendant for the reason that its rules precluded transfer of a liquor license until the transferee obtained a green light from the local authorities.)

The township's revised ordinances went into effect on March 11, 1999. The new zoning ordinance, unlike the old one, restricted the operation of sexually oriented businesses to land

zoned for industrial use and did not allow such businesses to be operated in areas zoned for commercial use.

The district court allowed the plaintiffs to file an amended complaint reflecting this and other changes. The redrafted complaint alleged that the township's new licensing ordinance violated the First Amendment by granting too much discretion to local officials. The new zoning ordinance [**5] was alleged to be constitutionally defective because it unduly restricted the potential venues in which the plaintiffs could exercise their protected rights of "speech."

After extensive discovery, and following some minor changes in the township's new ordinances, the district court began conducting an evidentiary hearing on August 8, 2000. The next day, in the midst of the hearing, the court decided to grant a summary judgment motion previously filed by the township. The court made it clear that the lawsuit was being dismissed solely for want of standing on the plaintiffs' part; there was no adjudication of the merits of the dispute. The order of dismissal was entered on September 1, 2000, and a timely appeal followed. Although the parties have addressed the underlying merits in their briefs on appeal, we see no need to opine on issues that have not yet been decided by the district court.

II

[HN1] To demonstrate standing to sue in federal court, under Article III of the Constitution, a plaintiff must demonstrate that

> "(1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly [**6] traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will

be redressed by a favorable decision." *Friends of the Earth v. Laidlaw Environmental Services (TOC), Inc., 528 U.S. 167, 180-81, 145 L. Ed. 2d 610, 120 S. Ct. 693 (2000).*

[HN2] If the plaintiff does not have standing to sue, a federal court has no jurisdiction to hear the plaintiff's case. *Greater Cincinnati Coalition for the Homeless v. City of Cincinnati, 56 F.3d 710, 715 (6th Cir. 1995).*

The question of the plaintiffs' standing in the case at bar has three aspects: standing to challenge the township's licensing ordinance, standing to challenge the township's zoning ordinance, and standing to challenge the Michigan Liquor Control Commission's refusal to transfer the liquor license. *Cf. Lewis v. Casey, 518 U.S. 343, 358 n. 6, 135 L. Ed. 2d 606, 116 S. Ct. 2174 (1996)*("Standing [HN3] is not dispensed in gross").

Although a number of Sixth Circuit decisions have recognized standing to challenge the constitutionality of sexually oriented business licensing ordinances on their face -- see, *e.g., Nightclubs, Inc. v. City of Paducah, 202 F.3d 884, 888-89 (6th Cir. 2000);* [**7] *East Brooks Books, Inc. v. City* [*313] *of Memphis, 48 F.3d 220, 224 (6th Cir. 1995)* -- the plaintiffs in those cases already owned or operated such a business. Still, [HN4] "when a licensing statute allegedly vests unbridled discretion in a government official . . . one who is subject to the law may challenge it facially without the necessity of first applying for, and being denied, a license." *City of Lakewood v. Plain Dealer Publishing Co., 486 U.S. 750, 755-56, 100 L. Ed. 2d 771, 108 S. Ct. 2138 (1988).*

The ordinance at issue in *City of Lakewood* prohibited the plaintiff, a newspaper publishing company, from erecting newsracks along the city's streets without first obtaining a permit. *Id. at 753-54.* The publisher was held to have standing to challenge the ordinance in federal court without first seeking

such a permit and without owning any newsracks in Lakewood. *Id. at 754-55.*

The Lakewood ordinance was alleged to "vest[] unbridled discretion in a government official." *Id. at 755.* The plaintiffs in the case at bar claim to be faced with an ordinance that suffers from a similar defect. And although the [**8] plaintiffs do not presently own a topless bar within Van Buren Township, no one disputes their intention to open one; indeed, they have expended considerable sums to retain the option to purchase land in the township for that purpose. (The township conceded at oral argument that the plaintiffs' option to purchase the I-94 service road property is equivalent, for standing purposes, to an absolute ownership interest in the property.) These plaintiffs are no less "subject to" Van Buren's licensing requirements, in our view, than the publisher in *City of Lakewood* was subject to the Lakewood ordinance. Accordingly, we conclude that the plaintiffs have standing to challenge Van Buren's licensing requirements for sexually oriented businesses.

By the same token, we conclude that the plaintiffs have standing to challenge Van Buren's zoning requirements. The Sixth Circuit has permitted similar suits to go forward without questioning the plaintiffs' standing to sue. See *e.g., Christy v. City of Ann Arbor, 824 F.2d 489, 490 (6th Cir. 1987)*(standing apparently unchallenged when plaintiff leased property where she intended to open an adult bookstore); *CLR Corp. v. Henline, 702 F.2d 637, 638 (6th Cir. 1983)* [**9] (no discussion of standing where plaintiff "purchased and remodeled" building with intent to open adult business); *Keego Harbor Co. v. City of Keego Harbor, 657 F.2d 94, 96 (6th Cir. 1981)*(standing unmentioned where owner of movie theater announced intention to show adult films). The present plaintiffs, as [HN5] owners of an interest in property on which they intend to open a topless bar, have standing to challenge the zoning restrictions to which the property is subject.

Finally, the plaintiffs argue that our decision in *G & V*

Lounge v. Michigan Liquor Control Commission, 23 F.3d 1071 (6th Cir. 1994), invalidates the Commission's policy of deference to local governments in the issuance of liquor licenses. Although we disagree with that reading of *G & V Lounge*, we conclude that the plaintiffs have standing to sue the Commission. The agency has admittedly postponed its approval of the liquor license transfer, and this postponement constitutes an "injury in fact."

The order of dismissal is **REVERSED**, and the case is **REMANDED** to the district court [**10] for further proceedings not inconsistent with this opinion.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THE GARTER BELT, INC.,
a Michigan corporation
d/b/a LEGG'S LOUNGE,
Plaintiff(s), Case No. OO-CV-60455

vs

CHARTER TOWNSHIP OF VAN BUREN,
A Michigan Municipal corporation,
Defendant(s) .
_____/

Deposition of CINDY KING, taken in the above-entitled matter before Stenograph Reporter, Kelly Forfar, at **46425 Tyler Road, Belleville, Michigan** on **Monday, June 25, 2001,** commencing at about **10:00 A.M.**

APPEARANCES:

RUBIN & RUBIN, PLLC
BY : ALLAN S . RUB I N (P44420)
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Appearing on behalf of the Plaintiff(s).

SOMMERS, SCHWARTZ, SILVER & SCHWARTZ, P. C.
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Appearing on behalf of the Defendant(s).

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(Exhibit not retained by reporter.)

Monday, June 25, 2001

DEPOSITION

(On record at about 10:18 a.m.)

CINDY KING

was called as a witness, and having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. RUBIN:

Q. Good morning, Ms. King, my name is Allan Rubin, I represent Legg's Lounge in a lawsuit captioned Garter Belt, Inc., d/b/a Legg's Lounge versus the Charter Township of Van

Buren. Today I am going to be asking you some questions

relative to that lawsuit as well as in conjunction with a

lawsuit filed by the Township against The Garter Belt, Inc.

in the Wayne County Circuit Court, which the parties have

agreed that these depositions may be used interchangeably.

If at any time you don't you understand a question

that I ask you, please stop and let me know. I will be happy

to rephrase it. I am not here to try to trick you or confuse

in any way, so if you don't understand a question that I ask

you, just let me know, okay?

A. Okay.

Q. Also you have to answer verbally, no nods of the

head or shakes because she can't take those

down.

A. Okay.

Q. Have you ever given a deposition before?

A. Yes.

Q. So you are generally familiar with all of the other rules and I won't go through them for you.

A. Yes, I think so.

Q. If at any time you want to take a break or you want to speak to your attorney, just stop and let me know, okay?

A. Okay.

Q. Please state your name and spell your last name for the record.

A. Cindy King, K I N G.

Q. Ms. King, what is your position -- strike that. I understand that you are employed by Van Buren Township?

A. Yes.

Q. In what capacity?

A. I am the township supervisor.

Q. How long have you been the township supervisor?

A. Since November 20th, 2000.

Q. Is that an elected or appointed position?

A. Elected.

Q. And how long have you been elected for?

A. Excuse me?

Q. What's your term?

A. 4-year term.

Q. Prior to being township supervisor, it is my understanding that you were employed as the clerk for the township?

A. Yes.

Q. How long did you hold that position?

A. Eight years.

Q. Again, is that elected or appointed?

A. Elected.

Q. And how long was the term?

A. Both terms were four years each.

Q. Okay. So I take it that you were elected for four years and then you were reelected?

A. That's correct.

Q. Prior to being the township clerk, what did you do?

A. I was a deputy clerk for four years before that.

Q. For this township?

A. Yes.

Q. And prior to being the deputy clerk, what did you

do?

A. I was a secretary in the Willow Run school system.

Q. How long did you do that for?

A. About two years.

Q. And prior to that, did you hold employment?

A. Yes, I worked for Coca-Cola.

Q. And what did you do there?

A. I was the plant manager's secretary.

Q. For what plant?

A. The Van Buren distribution center.

Q. And how long did you do that for?

A. About a year and a half.

Q. And did you hold a job before that?

A. Yes, Van Buren Township.

Q. What did you do there?

A. I worked in the police department.

Q. Doing what?

A. The chief's secretary.

Q. For how long?

A. Four years, four years, I believe.

Q. Who was the chief?

A. There were different chiefs during my time there.

Q. Okay.

A. My first one was George Montgomery.

Q. Okay.

A. And then a man named Richard Debs, D E B 5, and

Q. then Leonard Keller.

Q. Okay. Is that all of them?

A. Yes.

Q. What did you do before you worked as a secretary

for the township, I should say for the police department?

A. I spent some time in the clerk's office and the

treasurer's office.

Q. Let me ask you — was this your initial

employment with Van Buren Township, this period of time?

A. Yes, that was my initial employment.

Q. How long were you employed by the

Township during

that initial period of time?

A. Five years.

Q. And were all of them in -- you said four of them

was for the Chief of Police as a secretary --

A. Uh-huh.

Q. — and the other ones you said were in the

clerk's office?

A. And the treasurer's office.

Q. And the treasurer's office. Anywhere else?

A. No.

Q. What year did you first start working for the

Township?

A. 1978.

Q. And prior to 1978, did you hold any employment?

A. Yeah, I worked for a drugstore.

Q. Which drugstore?

A. American Vitamin.

Q. Is that in Van Buren Township?

A. In the city of Belleville.

Q. Okay. And before that?

A. Baby-sitting.

Q. Okay. Am I taking you back to your first job?

A. Yes.

Q. Okay. What year did you graduate high school?

A. 1979.

Q. What high school did you graduate?

A. Belleville High School.

Q. And did you go to college?

A. Yes.

Q. Where did you go to college?

A. I went to Wayne County Community College, Washtenaw Community College, and I pulled my undergraduate from Concordia College in Ann Arbor.

Q. What year did you graduate from Concordia?

A. 1990, I believe.

Q. With a BA?

A. Uh-huh.

Q. In what?

A. Human resource administration.

Q. Did you get any associate's degrees prior to that?

A. Yes, at Washtenaw.

Q. What did you get?

A. Liberal arts.

Q. I take it from your history of where you went to high school and where you have worked, you have been a lifelong resident of this general area?

A. For the most part, yes.

Q. Has that been in Van Buren Township or did you reside in Belleville, or both?

A. Both.

Q. When did you first start residing in Van Buren

Township?

A. When I was born.

Q. So you were born and your parents lived in Van Buren Township?

A. Yes.

Q. When is the first time that you were aware of a business called Legg's Lounge?

A. When was I first aware?

Q. Yes.

A. Probably sometime in the `80s, I am thinking.

Q. Okay. Did you become aware of it while you were working for Van Buren Township?

A. Yes, yes.

Q. And how did you become aware of it? Was it in a professional capacity, for example, working for the chief?

A. Yeah, probably.

Q. Okay. And what is it -- do you recall how you first became aware of it?

A. No.

Q. Okay. Do you know when it opened?

A. No, I don't know the specific date.

Q. Okay. Do you have a general idea?

MR. SZYMANSKI: If you don't know, just tell him you don't know.

THE WITNESS: Yeah, I don't know.

Q. (BY MR. RUBIN): How is it that you first became aware of it; was there an incident or something that sparked your awareness?

A. Probably. I don't know, probably.

Q. Okay. Now where is Legg's Lounge located?

A. On Michigan Avenue.

Q. Between — do you know -- can you give me some

more specifics?

A. Northwest part of the township, south side of Michigan Avenue, west of Belleville Road.

Q. Now, when you first became aware of -- strike that.

When do you first recall having any professional dealings, if at all, with Legg's Lounge?

A. When I worked in the police department.

Q. Okay. And do you recall any of the professional dealings that you may have had over the years?

A. No.

Q. No incident or anything sticks out in your mind?

A. I know there were incidents that occurred there.

Q. Okay. You mean the police runs and things like that?

A. Uh-huh.

Q. Is that a yes?

A. Yes, I am sorry.

Q. Are there police runs and incidents that occur in other locations in Van Buren Township?

A. Yes.

Q. Okay. Now, you were the clerk when the city adopted -- I'm sorry, the township adopted a series of ordinances attempting to regulate adult businesses?

A. Yes.

Q. As clerk did you have to go to city council — I guess township board of supervisor meetings or --

A. Yes.

Q. — or their equivalent?

A. Yes.

Q. Did you go to zoning board hearings?

A. No.

Q. Did you go to planning commission hearings?

A. I have been to planning commission meetings, yes.

Q. Did you ever go to any planning commission

meetings, zoning board of appeals meetings or township

supervisor meetings in your capacity as the township clerk

when these ordinances were being considered for adoption?

A. No.

Q. Who was the clerk who would have gone to those

meetings?

A. I am not sure if I understand your question.

Q. Sure. Well, typically as I understand the

township board of supervisors and how they work, when they

have a meeting there is generally the clerk or somebody from

the clerk's office there, correct?

A. No.

Q. That's not true?

A. Not in Van Buren's case

Q. Okay. Who records minutes and all of those things?

A. We have various employees who serve as recording secretaries through our commissions and committees.

Q. Is there a record --

A. The minutes of any of those meetings should be

signed by a recording secretary.

Q. Okay. Who maintains the materials submitted to those types of hearings?

A. The official minutes are kept in the clerk's office.

Q. Okay. Who maintains -- strike that. For example, if materials submitted as exhibits and things like that, how are those handled in the clerk's office? Let me see if I can make the question a little bit clearer For example, if somebody were to submit to -- let's use the planning commission or the material in support of an adoption of an ordinance, would those materials typically be maintained?

A. They would likely be maintained, but perhaps not in the clerk's office.

Q. Where would they be maintained?

A. They may be maintained in the department of developmental services.

Q. Okay. Is there somebody who is responsible for ensuring the accuracy and completeness of those records and

files?

A. Yes, the director of the department.

Q. And who would that have been back in — at the time of the adoption of these ordinances?

A. That would have been Bryce Kelly.

Q. My understanding is that Mr. Kelly is no longer employed by Van Buren Township?

A. That's correct.

Q. Did he retire — do you know the circumstances of him leaving?

A Yes.

Q. What are those?

A. He resigned to take another position.

Q. Does the city of Van Buren -- strike that, does the township of Van Buren maintain records of property value?

A. Yes.

Q. How are those records maintained?

A. I am sorry, property value?

Q. Property value records?

A. We maintain property records of ownership.

Q. Okay. Do you have an assessor's office?

A. Yes, we do.

Q. What does the assessor's office do here in the township?

A. Well, we maintain a record of improvements to properties, you know, new construction, renovations, that kind of thing, lists of owners.

Q. Well, one of the things that they do is send out the tax assessments, right?

A. Yes.

Q. And do you know how long those records are

maintained for?

A. No, I do not.

Q. Who would know those— who is the township

assessor?

A. Wayne County does the assessment for Van Buren

Township.

Q. Okay. And where are -- who is in charge of

keeping those records here at the township?

A. Within the assessor's office, Susan Ireland and

Linda Stevenson.

Q. For example, if I wanted to go get records of

various property values, I would go see Susan or -- I am

sorry --

A. Yes, Susan or Linda Stevenson.

Q. And they would be able to provide me with the

record for the various parcels of property?

A. Yes.

Q. Those would be the two people that I would ask

about that, correct?

A. Yes.

Q. If I wanted to find out crime statistics for Van

Buren Township, do you know if those are maintained?

A. Yes, I believe they are.

Q. For example, do you know if you report to the FBI

as part of the Uniform Crime Reporting?

Yes, I believe we do.

Do you know where those records are maintained?

In the public safety department

And who would be in charge of maintaining those

records?

Right now our interim public safety director is Allen Smolen.

MR. SZYMANSKI: Spell first name

THE WITNESS: ALLEN, SM0LEN.

MR. SZYMANSKI: Thanks.

Q. (BY MR. RUBIN) : Now, in what capacity did you attend the various hearings? You said that you attended some hearings, one of the commissions, boards, as it related to adoption of the adult entertainment ordinance?

MR. SZYMANSKI: Let's just clarify, the body we are talking about is the board of trustees

MR. RUBIN: The board of trustees. Would you agree that wherever I say board of supervisor, it is the boards of trustees.

Q. (BY MR. RUBIN): In what capacity did you attend those

I would have attended those as the clerk of the township.

Q. And for what purposes?

A. To vote on those matters that come before the board.

Q. Okay. I take it that you would have -- you would have been a voting member?

A. Yes.

Q. And would have been responsible for casting at least one of the votes in support of the adoption?

A. Yes.

Q. Now, you clarified something for me and I

apologize.

Now, when you were the clerk of the township and voting on these matters, what information was provided to you in support of the adoption of these ordinances?

A. I don't remember what we were given as part of our packet.

Q. Okay. Now, what -- did you meet with anybody to discuss the adoption of these ordinances?

A. Well, I am sure Bryce Kelly was part of those meetings. As the director of the department he would have brought those items for consideration to the board.

Q. Were these ordinances -- am I using the correct term?

A. Yes.

Q. Were these ordinances drafted by somebody from the

township? I mean, for example, were they introduced by a

specific member?

MR. SZYMANSKI: Allan, just let me be clear. You

asked her on the one hand if they were drafted by somebody

and then --

MR. RUBIN: Let me see if I can rephrase it.

Q. (BY MR. RUBIN) : Were these ordinances introduced

by a specific member of the township board of trustees?

A. The items are placed on an agenda by the township

supervisor.

Q. Okay.

A. Bryce Kelly would have given those items to the

supervisor to be placed on the agenda.

Q. Prior to these ordinances being proposed to the board of trustees, do you know -- strike that. Do you know whether the board of trustees instructed anybody to begin adoption of such ordinances?

A. No, I do not recall the board giving that direction.

Q. Okay. In your capacity, did you learn why these ordinances were proposed?

A. Could you repeat that, please.

Q. Sure. In your capacity as a member of the board of trustees, did anybody tell you why they were proposing these ordinances?

MR. SZYMANSKI: She is not. Allan, not to make to

fine of a point on it, she is not a member of the board of

trustees.

THE WITNESS: Yes, I am.

MR.SZYMANSKI: As an elected clerk you are a member of the board of trustees.

THE WITNESS: Yes.

MR. SZYMANSKI: My mistake, I am sorry.

Q. (BY MR. RUBIN): As the elected member of the board of trustees, do you recall how — what circumstances it was that these were placed before the board of trustees for consideration?

A. I am not sure I understand what you mean by what circumstances.

Q. Well, sure, I mean, had there been an incident in the community that sparked an interest in the adoption of these ordinances?

A. No, not a specific incident in the community.

Q. Okay. Were there any specific incidents outside of the community?

A. During that period of time, 1998, 1999, the township was going through many of its ordinances, making revisions, adopting new ordinances, trying to address a considerable amount of growth that was and is continuing to occur in the community.

Q. Uh-huh.

A. Part of a master plan revision -- so in that context that's --

Q. So as near as I understand it, you were updating and revising the township's master plan?

A. Yes, which also included drafting new ordinances

and making revisions to old ones and that kind of thing.

Q. And at some point somebody suggested that you

adopt a series of ordinances dealing with adult

entertainment, correct?

A. I don't know that to be the case.

Q. Okay. Somehow they managed to meet --

A. They came to the board.

Q. They came to the board.

A. Yes.

Q. And as near as I understand it, you don't recall

anybody from the board instructing somebody to --

A. Not that took place in my presence, no.

Q. Okay. And at that time there had been an adult

entertainment facility in town. At least one, for at least

twenty years, correct, or right around that time?

A. Yes, that being Legg's, yes.

Q. Do you know whether anybody ever approached

anybody from Legg's to get their input or to seek their input

on what types of ordinances may be appropriate to adopt for

the --

A. I don't know if anyone did that.

Q. Do you recall anybody from Legg's appearing before

the township board to testify one way or the other?

A. No, I don't recall anybody appearing from Legg's.

Q. Do you know whether anybody invited them to

appear?

A. I don't know.

Q. Are there other bars in town other than Legg's?

A. Yes.

Q. And when I say in town, I mean in the township?

A. Yes.

Q. Approximately how many licensed liquor establishments are there who serve alcohol on the premises?

A. A dozen.

Q. At the time that these -- that these ordinances were being adopted, do you know if anybody ever compared, for example, the need for police services between liquor licensed establishments without — I am sorry, without adult entertainment and those with adult entertainment?

A. I missed the first part. Can you repeat it.

Q. Sure. As a part of adoption for these ordinances,

do you recall anybody who compared the need for police

services between liquor licensed establishments that did

present adult entertainment and those that did?

A. Nothing like that was brought before the board.

Q. Do you know whether or not anybody compared

property values in and around adult entertainment facilities

which -- the adult entertainment facility and those around

other alcohol serving facilities which don't feature adult

entertainment?

A. No, I don't know if anyone did that.

Q. And you don't recall anybody testifying to the

board about that?

A. No.

Q. Did you review any studies in connection with the

adoption of these ordinances from other communities?

A. No.

Q. Did you conduct -- did the board of trustees or

anybody else direct anybody to conduct any studies of the

effects of adult entertainment on the township, for example?

A. Did the board direct?

Q. Yes.

A. No.

Q. Do you know if anybody else did that?

A. No, I don't know.

Q. Did anybody testify or provide information to the

board relative to that?

A. No, I don't think so.

Q. Okay. Did you conduct -- strike that. Do you

recall whether -- strike that. Let me rephrase the

question.

Do you recall anybody testifying or providing information to the board about what were commonly referred to as adverse secondary effects of adult entertainment?

A. Do I remember if anyone --

Q. Did anybody provide information to the board about that?

A. Tell me what you mean by adverse secondary.

Q. Sure. And let me see for purposes of this question if you can use this definition, whether or not it is the right one or not. Bad things from adult entertainment, that adult entertainment in a community causes bad things in or around it as opposed to what would generally be referred

to as primary effects; and that would be the person's

response to watching that kind of entertainment. Do you know

the distinction?

A. I know when those ordinances went to the board we

talked about demands for service.

Q. Okay. Now do you know what information you

received relative to demands for service?

A. I don't recall us getting any written

documentation, I know it was talked about.

Q. Do you recall what was talked about?

A. More calls, you know, police officers being called

out more frequently perhaps than other locations, that kind

of thing.

Q. Do you know what information, underlined, the

police -- whoever testified to about that information?

A. I don't you had.

Q. Sure. Let me ask you a question. You heard Mr.

Szymanski and I talking earlier today about some

information --

A. Uh-huh.

Q. -- and some documents that he given me. And I am

going to show you a packet of materials --

MR. RUBIN: I am going to have it marked, I guess,

just for identification purposes, as one.

(Deposition Exhibit No(s) 1

marked for identification.)

Q. (BY MR. RUBIN) : And these were some documents

that were previously provided to us and identified by Mr.

Perkins as being the information that the police

department

supplied to Mr. Kelly relative to the calls for service,

okay?

A. Okay.

Q. Do you know whether or not the information

contained in those packets were what was talked about? And

you can feel free to take a look at them.

A. These are different copies of police records.

am sorry, your question was?

25

Q. Do you know whether those were the police reports

that were talked about?

A. There were no specific reports or incidences, as I

recall, discussed, it was more in a general sense.

Q. And do you know -- would you agree

with me that

6 it would be important to know whether or not the information

7 that was talked about with the board was accurate?

8 A. Well, of course.

9 Q. For example, if you take a look through -- here,

10 can I see that for a second.

11 A. Uh-huh.

12 MR. SZYMANSKI: While you are looking, I want to

13 place an objection on the record. First of all, I think

14 there is no suggestion and certainly been no testimony that

15 these reports were presented to the board in any form. So, I

16 mean, if you are going to ask her whether or not these

17 reports are somehow in error, it assumes facts not in

18 evidence that they were ever presented to the

board.

MR. RUBIN: Thank you.

Q. (BY MR. RUBIN) : Now, do you remember there being any discussions, for example, of any incidents of indecent exposure?

MR. SZYMANSKI: I am going to object to your answering it until you define the term.

Q. (BY MR. RUBIN): To an individual exposing

themselves to another individual, their genitalia?

MR. SZYMANSKI: Your question is, were incidences of indecent exposure as you just defined it discussed with the board at the time of ordinance adoption ?

MR RUBIN: Yes.

THE WITNESS: Not that I recall.

Q. (BY MR. RUBIN) : Do you recall general incidences such as that being discussed?

A. No.

Q. Okay. Do you recall any general incidents being discussed?

A. I recall it being mentioned that there were -- I am at a loss how to -- calls for service generally.

Q. Okay.

A. Calls for police service.

Q. Okay. And do you know what those calls for police services were compared to?

A. No, I don't.

Q. And when somebody says, for example, they had more calls for service, do you know who they were comparing those

calls to services to?

A. No.

Q. Was that ever discussed?

A. I don't remember.

Q. And the reason I ask you that is -- you know, for

example, a house located at 1126 Main Street may certainly

have less calls for service than a commercial business, would

you agree with that?

A. Perhaps.

Q. May have more, but it would be important to know

what you were comparing, would you agree, when you are

talking about calls for service?

A. Yes.

Q. Okay. And would you agree with me, for

example,

it would also be important to know that you were talking

about the specific business that you were talking about as

opposed to some other business, correct? Let me give you an

example, I want you to assume for a moment Mr. Perkins, who

is I understand the former police chief?

A. The former public safety director.

Q. Former public safety director, testified that they

supplied a packet of information to Bryce Kelly. And in that

packet of information, for at least many of the years was

inaccurate or what appeared to him to be inaccurate

information. For example, calls to a place at Sunset Plaza,

okay?

A. Okay.

Q. Would that have been important to know at the time

that you were discussing the adoption of these ordinances?

MR. SZYMANSKI: Well, again, it assumes facts not

in evidence and I think you have mischaracterized Mr.

Perkin's testimony. His testimony was not that that

information was presented to the board of trustees, he just

characterized it.

MR. RUBIN: Fair enough, your objection is noted.

Q. (BY MR. RUBIN) : You can answer the question.

A. I didn't know that any material had been provided

to Mr. Kelly.

Q. Okay. So it wouldn't have mattered one way or the

other what information was provided to him?

MR. SZYMANSKI: It wouldn't have mattered to whom,

Allan?

MR. RUBIN: To her.

Q. (BY MR. RUBIN) : Let me see if I can back up for a

minute and perhaps I can make my question a little clearer.

Who was discussing calls of service?

A. Director Kelly at the time, he brought that item

to the board for consideration.

Q. Okay.

A. The ordinances.

Q. Okay. And what was Mr. Kelly discussing with the

board relative to calls for service?

A. He discussed the research he had done.

Q. What did he tell you the research he had done was?

25 A. Getting information from the public safety

1 department--

2 Q. Okay.

3 A.--in part.

4 Q. Now, would it have been important to your

5 consideration back then if the information that he was

6 relying upon was -- to know whether or not it was accurate?

7 A. Yes

8 Q. Okay. So, for example, if Mr. Kelly was provided

9 with information which was inaccurate, would that have

10 affected your consideration, perhaps, of these ordinances?

11. A Yes

12. Q. Okay. What else do you recall Mr. Kelly

13 discussing with you relative to the adoption or

the reasons

for adoption of these ordinances?

A. I guess I don't recall anything else.

Q. Now, did anybody discuss with you what types of

problems that you were having, for example, with Legg's

Lounge?

I don't recall him bringing up specific

incidences.

Q. Did anybody discuss with you how these proposed

ordinances would further any -- further the alleviation of

any of the harms that were generally brought to your

attention?

A. Say that one more time.

Q. Sure. For example, do you recall anybody giving

you any information as to how these proposed ordinances might

stop problems in the future?

I don't recall us getting any other written

information, no.

Q. Do you recall any other verbal information?

A. Other than what I said earlier about reducing,

perhaps, calls, you know, the times that the police

department would be called to locations like that.

Q. Okay. Now, do you know whether or not the

proximity -- strike that, the location in which the business

was located itself as opposed to the business may have had

anything to do with the calls for service?

A. Do I know if the location would have had --

Q. Did you guys have any discussions about that?

A. As far as -- I am not sure if I understand your

question.

Q. Sure, let me see if he can rephrase it. I have a

map here of Van Buren Township. And you can ignore coloring

and the circles, but near as I understand it, Legg's Lounge

is located in or about this area where — sort of near area

one?

A. Uh-huh, yes.

Q. Is that a yes?

A. Yes, I am sorry.

Q. And it is located on Michigan Avenue?

A. Yes.

Q. Is Michigan Avenue a small country road?

A. No.

Q. Is it one of the major thoroughfares through the community?

A. It would be one of our major east west, yes.

Q. Okay. Now do you know whether or not its proximity just being on Michigan Avenue had anything to do with the calls for service?

MR. SZYMANSKI: If you know? If you don't know, tell him you don't know.

THE WITNESS: I have an opinion.

MR. SZYMANSKI: He is not asking your opinion.

Q. (BY MR. RUBIN): Do you have an opinion?

A. I would assume being a busier road that --

MR. SZYMANSKI: Don't assume, tell him what you know or don't know.

Q. (BY MR. RUBIN): Well, for example,

how close is

it to the edge of the township?

A. It is fairly close to our northwestern boundary.

Q. So any police runs to that area would generally be

in or around that business, correct, to the northeast

quadrant?

A. Northwest.

Q. I am sorry, northwest quadrant?

A. Say that one more time.

Q. Sure, let me give you an example. Somebody breaks

down on Michigan Avenue and pulls into the parking lot and

calls for the police. Do you know whether or not that those

types of incidences were included in the discussion of the

calls for service?

A. No, I don't know that they were.

Q. Now, as I understand it, there is a big area kind of just behind Legg's Lounge that is taken up by some business, correct?

A. Yes.

Q. Is that the airport?

A. Yes, it is.

And in or about this quadrant, what other types of commercial businesses are located in an area near Legg's Lounge?

A. What other businesses are located up here?

Q. Yes.

A. There is a mobile home park, there is another bar east of Legg's Lounge on Michigan Avenue, and as far as from Van Buren Township, that's about it.

Q. Did you guys undertake or discuss any --

have any

24 discussion about calls for services, for example, to the bar

25 in a similar area of town?

1 A. No, I don't recall us talking about that bar

2 specifically.

3 Q. Did you have any discussions as to how, for

4 example -- having coverings of the dancers inside the bar

5 would affect the calls for service?

6 A. No, we did not talk about that.

7 Q. Was any information provided to you as to how

8 requiring some covering of the dancers inside the bar

9 engaging in dance activities would affect calls for service

10 to the location?

11 A. No.

Q. Did anybody discuss with you how making it a crime

for somebody to have -- for somebody to appear in public

with their male genitals -- and I apologize, I am just

reading from the ordinance, in a -- a turgid state would

affect the crime rate in Van Buren Township?

A. Was that discussed, is that the question?

Q. Yes.

A. No, it was not.

Q. Did anybody discuss how requiring a fully opaque

covering of the female breast covering at least part of the

nipple or areola would affect crime in Van Buren Township or

calls to service in general?

A. No.

Q. Was any information provided to the board relative

to those issues?
A. No.

Q. Did anybody discuss with the board the affect that

licensing of adult entertainment businesses within the

township would have on calls for service, for example, to

adult entertainment venues in the township?

A. Excuse me?

Q. Requiring licensing of adult entertainment vendors

would have on calls for service within the township?

A Did anyone discuss how licensing them? --

Q. Yes.

A. Well, licensing would provide a means for tracking

those uses, it would provide some information to us that we

may not have.

Q. Do you know what information, for example, that

the township was lacking over the ownership of Garter Belt at

the time that it adopted this ordinance?

A. No, I don't know.

Q. Were you aware of who the owner of Legg's Lounge

was at the time that you adopted this ordinance?

A. Yes.

Q. That is John Hamilton, correct?

A. Yes.

Q. It wasn't a secret that he was the owner of this,

was it?

A. No.

Q. Was there a reason that the township sought to

adopt these ordinances --

MR. SZYMANSKI: Asked and answered.

(BY MR. RUBIN) : -- other than the revision of these plans -- I am sorry, the master plan and the going through of the ordinances to change them?

A. I am sorry?

Q. Was there any other reason other than you were going through the plans to change them -- I am sorry, the master plan to update it to account for new growth within the community, and adopting and amending some ordinances, were there any other reasons other than the mere fact that you were doing that, that these ordinances were adopted?

A. No, I guess -- I don't know

Q. I mean, was there any, you know -- was there any -- had there been any complaints, for example,

to the

township that nudity was going on inside the bar?

A. No.

Q. Were there any -- any problems associated with

the bar other than perhaps some more calls for service from

the police?

A. Not that I know of

Q. Was anybody complaining that you were unable to

attract growth because of the presence of the bar in the

township?

A. No.

Q. And I take it, perhaps retracting some of this

growth the township might be wishing right now? I am

teasing.

Was there any complaints that proper values were

being decreased by of the presence of this business?

A. No.

Q. So it was essentially a ministerial function of

updating the ordinances, as near as I can tell, correct?

A. Yes, it is.

Q. Do you know who drafted these ordinances?

A. No, I do not.

Was there any discussion of these ordinances other

than Mr. Kelly making his presentation to the board of

trustees?

A. Do you mean by other people?

Q. Yes.

19 A. No.

20 Q. So nobody else other than Mr. Kelly, I guess,

21 appeared before the board of trustees to discuss the reasons

22 for adoption of these ordinances?

23 A. That's correct.

24 Q. Would there have been any other procedure that

25 would have gone through prior to coming to the board of

1. trustees other than whatever Mr. Kelly may have done?

2 A. They may have gone before a planning commission.

3 Q. Do you know, did the planning commission make any

4 recommendations relative to these ordinances?

5 A. I don't remember.

6 Q. Okay. Who else was on the board of trustees at

the time that these ordinances were adopted?

A. Helen Foster would have been supervisor. Sherry

Budd..

Q. What was Sherry Budd?

A. She was a treasurer.

Q. Can you just give me each person's position as you

give me their names?

A. Sure. The four trustees would have been Donna

Clark, Philip Hart, HART, John Herman and Walter

Rochowiak, that's ROCHOWIAK.

MR. SZYMANSKI: Walter was the first name?

THE WITNESS: Yes.

Q. (BY MR. RUBIN) : Subsequent to the adoption of

these ordinances, other than perhaps -- I understand there

was another lawsuit that was filed against the

township by a

company called Procko Entertainment?

A. Yes.

Q. Other than discussions relating to that lawsuit or

this lawsuit, has any of the issues about these ordinances

come back before the board of trustees other than in the

context of discussion of litigation?

A. No.

Q. Have there been any ongoing complaints relative,

for example, to Legg's Lounge subsequent to the time of the

adoption of these ordinances other than the lawsuit?

A. Not that I am aware of.

Q. And as the township supervisor now, I take it that

you would be the person who would be in the know because, as

l understand it, you are responsible for administering all of

the departments within the city -- within the township?

A. Yes, I am supposed to be in the know. I just

don't know if there's any --

Q. Nothing important enough to bring it to your

attention, fair enough?

A. Correct.

MR. RUBIN: All right. Thank you. I have nothing

further.

MR. SZYMANSKI: I just have one.

EXAMINATION

BY MR. SZYMANSKI:

Q. Do you know McKenna and Associates?

A. Yes.

Q. During the course of the board of trustees's

consideration of the adoption and modification of the ordinances in question here, did representatives from McKenna & Associates make presentations to the board of trustees?

A. Not that I remember.

Q. Are you aware of McKenna and Associates making presentations to the planning commission?

A. I don't remember if they did or not.

MR. SZYMANSKI: Okay. No other questions

MR. RUBIN: Nothing further.

(Whereupon deposition was concluded at about 11:10 a.m.)

CERTIFICATE OF REPORTER

STATE OF MICHIGAN)
SS)
COUNTY OF OAKLAND)

I hereby certify that on the date and at the place hereinbefore set forth, I reported stenographically the proceedings held in the matter hereinbefore set forth, and that the testimony so recorded was subsequently transcribed by me with the use of computer-aided transcription under my direction and supervision, and that the foregoing is a full, true and accurate transcript of my original stenotype notes

DATE: 7.10.01 /S/

Kelly Forfar
(CSR- 3618)
Certified Reporter

Notary Public:
County of Oakland
My Commission Expires
January 1, 2002

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THE GARTER BELT, INC.,
a Michigan corporation,
d/b/a LEGG'S LOUNGE,
Plaintiff(s), Case No. 00-CV- 6O455
vs

CHARTER TOWNSHIP OF VAN BUREN,
A Michigan Municipal corporation,
Defendant (s) /

Deposition of **JOANNIE PAYNE**, taken in the above-entitled matter before Stenograph Reporter, Kelly Forfar , at **46425 Tyler Road, Belleville, Michigan** on Monday, **June 25, 2001**, commencing at about **11:00 AM.**

APPEARANCES:

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SOMMERS , SCHWART , SILVER & SCHWARTZ, P.C.
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Appearing on behalf of the Defendant(s).

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NO EXHIBITS MARKED

Belleville, Michigan

Monday, June 25, 2001

DEPOSITION

(On record at about 11:26 a.m.)

JOANNIE PAYNE

was called as a witness, and having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. RUBIN:

Q. Good morning. Could you state your name and spell your last name for the record.

A. Joannie Payne, PAYNE.

Q. Ms. Payne, my name is Allan Rubin, I

represent The

19 Garter Belt, Inc. in a lawsuit captioned The Garter Belt,

20 Inc. versus the Charter Township of Van Buren.

21 Today I am going to be asking you some questions

22 relative to that matter along with another matter captioned

23 the Charter Township of Van Buren versus The Garter Belt,

24 Inc. pending in the Wayne County Circuit Court in which the

25 parties have agreed can be used in either matter.

1 I am going to ask you some questions about that

2 matter. If at any time I ask you a question that you don't

3 understand, please stop me and let me know.

4 A. Okay.

5 Q. I can ask confusing questions and you are

not

going to insult my feelings if you tell me that you can't

understand my question. Because if you answer a question, I

am going to assume two things: One, that you understood the

question and, two, that you are giving the answer that you

intend to, okay?

A. Uh-huh.

Q. The other thing is that you have to answer yes or

no. Nods of the head, shakes, uh-huhs and huh-uhs are very

difficult to be recorded by the court reporter, so please

make sure that you answer those questions verbally and with

yes or nos or whatever answer that you feel you need to give

to a question, okay.

A. Yes.

Q. Ms. Payne, I understand that you are now the township clerk for Van Buren Township?

A. Yes.

Q. I understand that is an elected position?

A. Yes.

Q. I understand that it is a four-year elected position, correct?

A. Yes.

Q. I understand you sit on the board of trustees as a result of that elected position?

A. Yes.

Q. Who else sits on the board of trustees with you presently?

A. Do you want their names?

Q. Names and titles.

A. Cindy King as supervisor, myself as clerk, Sherry

Budd as treasurer. The four trustees are Philip Hart, John

Herman, Jeffrey Jar and Walter Rochowiak.

Q. How do you spell Rochowiak?

A. ROCHOWIAK.

Q. And how long have you been the township clerk?

A. Since November 20th, 2000.

Q. Congratulations.

A. Thank you.

Q. Prior to being the township clerk, did you hold a

position within the township?

A. Yes, I was the deputy clerk.

Q. Is the deputy clerk an elected or appointed

position?

A. Appointed position.

Q. Who appoints that position?

25 A. The township clerk.

1 Q. Okay. For how long did you serve as the deputy

2. clerk?

3 A. Four years.

4 Q. And prior to that, were you employed by the

5 township?

6 A. Yes.

7 Q. And what did you do?

8 A. Accounting.

9 Q. When you say accounting, what do you mean?

10 A. Accounts payable, payroll.

11 Q. I got you. You were doing the accounting

12 functions for the township?

13 A. Right.

14 Do you have a degree in accounting?

A. No.

Q. For how long did you do those accounting type of things?

A. From 1992 to 1996.

Q. Were you employ by the county before that -- I am sorry, the township before that?

A. Yes.

Q. For how long were you employed before that?

A. I have got two tenures here, I was originally employed in 1986 -- no, 19 -- excuse me, 1981 to 1986 and came back in 1990.

Q. Okay. Why don't we do this. Between 1990 and 1996, what did you do, what various jobs did you hold, if any?

A. Account Clerk and assistant bookkeeper.

Q. `81 to `86, what did you do?

A. Clerk typist and account clerk.

Q. Between `86 and `90, were you employed?

A. Yes.

Q. Where were you employed?

A. That was also here, that was part time.

Q. Okay. And what did you do when you were employed

part time for the township?

A. Same types of duties.

Q. So as near as I understand it, from `81 until

present you have been employed in some capacity by the

township of Van Buren?

A. Correct

Q. Was that the first job that you had, was working

for the township Van Buren?

A. No.

Q. First full- time job, I should say?

A. Yes

Q. Prior to that what did you do in 1981?

A. I went to college and worked part time in a clothing store.

Q. Where did you go to college?

A. Eastern Michigan University.

Q. Did you obtain a degree?

A. No.

Q. For how long did you go to school there?

A. Two years.

Q. What was your course of study, if any?

A. General.

Q. Did you ever finish your degree?

A. No.

Q. What year did you graduate high school?

A. 1979.

Q. And from where did you graduate high school?

A. Belleville High School.

Q. Near as I can tell, then, you have been pretty much a lifelong resident of the township or the city?

A. That's correct.

Q. Back in or about February of 1999, a series of ordinances were adopted by the township, which bring us here today. Are you familiar with those ordinances, the adult entertainment ordinances, I guess, for a lack of a better term?

A. Yes.

Q. How did you first become familiar with those ordinances?

A. I processed the paperwork to put it on the agenda.

Q. Okay. Was that the first time that you had learned, while you were processing the paperwork to put it on the agenda, that these ordinances were being discussed by the township?

A. I believe so.

Q. Okay. Perhaps you could explain to me as the township clerk what the process of ordinance adoption is in the township. And let's talk about an ordinance that is not a zoning ordinance, because I understand that process is a little different, correct?

A. Correct.

Q. Let's just talk a regular ordinance, not in zoning?

A. A department would have an ordinance

that they

would want to bring forth for consideration to the board,

they would draft the ordinance, have it reviewed. Upon

review, usually of legal counsel and things of that nature, a

final draft of the ordinance would be directed to the

supervisor's office with a request that it be placed on the

agenda for consideration.

Q. Okay.

A. The supervisor would then, you know, give it a

review, cursory or in-depth, and then either okay it or not

okay it for placement on the agenda.

Q. Okay.

A. At that point then the department makes the

appropriate numbers of copies of the document, brings to the

clerk's office with the approval for it to go on the agenda,

and we place it on the agenda.

Q. Okay. How is a zoning ordinance adopted?

A. I don't have a lot of experience with zoning

ordinances prior to when they come to the part that I am

aware of for placing it on the agenda. I am not familiar

with their specific deadlines for their process.

Q. Okay. Now, you said that you first became aware

of these ordinances once they were being placed upon the

agenda, correct?

A. Correct.

Q. So that was after they were drafted by whatever

department proposed them, correct?

A. Correct.

Q. After they were reviewed by whoever may have

reviewed them, correct?

A. Correct.

Q. After they were corrected, if there were any

corrections to them, correct? And by that I mean, for

example, if they were sent off to legal counsel and legal

counsel said do this or that, that step was already done

before you got them, correct?

A. Yes.

Q. Okay. And they had been approved for placement on

the agenda by the supervisor; is that correct?

A. Yes.

Q. What information do you recall being provided to

you to process? Was it just -- was it the ordinance itself

or anything else?

A. I don't recall specifically how that one came into

being. Sometimes what we get initially is just the cover

sheet, sometimes it is the full documents that come.

Q. Do you ever get ordinances to process that and

have materials in support of them? For example, somebody

wants to adopt ordinance 2-16-99-26, let's just use that as

an example, and they give you the ordinance for -- after it

has opinion approved. Do they ever give you any materials to

put with it?

A. Yes.

Q. Okay. In this case, do you know whether there

were materials provided to be put with the

ordinance?

A. I don't know.

Q. Is there a copy of what was provided to the board

maintained by the clerk's office?

A. Yes.

Q. Where is that maintained?

A. The agenda pack.

Q. Okay. Do you know if there is an agenda pack for

this ordinance or these set of ordinances?

A. Yes.

MR. RUBIN: Mr. Szymanski, would it be possible to

get that agenda pack?

MR. SZYMANSKI: Sure, we will do what we can. I

suggest you give me a letter or document request or something

to remind me.

MR. RUBIN: Is that something we could get today,

perhaps in review so we don't have to --

MR. SZYMANSKI: We are going to take a look at it

first.

MR. RUBIN: Is the answer, then, no?

MR. SZYMANSKI: Yeah, we are not going to get it

today, we will be happy to get it for you.

Q. (BY MR. RUBIN) : Okay. Have you reviewed the

agenda pack prior to your deposition today?

A. No.

Q. Have you review any materials prior to your

deposition?

A. I saw a cover sheet of the ordinance.

Q. Anything else?

A. No.

24 Q. Now, after you prepared this agenda pack, did you

25 have anything else to do with this ordinance or these series

1 of ordinances?

2 A. Yes.

3 Q. What else did you have to do?

4 A. Once the board either approves or disapproves an

5 ordinance, a synopsis of the ordinance or sometimes the

6 ordinance in its entirety becomes a part of the minutes for

7 publication. It is my responsibility to see that that part

8 of it gets taken care of.

9 Q. Do you know if there is a synopsis -- well,

10 strike that. We know that there are minutes, correct, from

11 the meetings that adopted these?

A. Yes.

Q. Is there any other materials that you may have

come into contact with relative to these ordinances other

than the synopsis or the ordinances themselves?

A. I am not sure I understand what you mean.

Q. Any other documents that you may have come into

contact with or possessed other than the ordinances

themselves and the minutes of the board of trustees adopting

them?

A. Only the supporting information that would have

gone to the board.

Q. Okay. What types of information would have been

included in that?

A. I can't say specifically to this but --

Q. In general

A. In general, sometimes there is a memo or a map,

that type of document.

Q. For example, do you know if the building

department or planning, or whatever it may be called, does

staff reports? Strike that. Let me see if I can rephrase

this. There are typically with ordinances staff reports

provided to the board?

I don't know.

Do you recall what other information or what other

specific information may have been provided as part of this

agenda pack?

A. No, sir.

Q. After getting that material back,

preparing --

did you prepare the minutes of those meetings?

A. Yes.

Q. How -- what types of information do you put in

the minutes of those meetings?

A. The action of the board.

Q. For example, does the township record in any

fashion, board hearings?

A. Yes.

Q. How are those recorded?

A. On a tape recorder.

Are those tapes of the board's meetings retained

in any way?

A. No.

Q. So they are destroyed after the meetings?

A. If you mean by destroyed , are they taped

over,

yes.

Q. How long do you typically maintain tapes of those

meetings?

A. Until they next meeting.

Q. Are there ever any times that you retain a tape

a meeting?

A. Yes.

Q. Okay And what circumstances would you maintain a

tape of a meeting?

A. At the request of the supervisor or the clerk.

Q. Do you know whether or not the tapes of the

meetings regarding the adoption of these ordinances were

maintained?

A. I don't believe they were.

Q. Was there ever any discussion about maintaining these tapes, that you can recall?

A. No.

Q. And if they were — if they were maintained, who would have possession of them? I mean, which officer of the township?

A. clerks's office

Q. And that's the office that you run?

A. That's correct.

Q. And are they locatable if they were maintained?

A. Yes.

Q. Have you ever looked for those tapes?

A. No.

Q. Other than putting together the agenda, so to speak -- I am sorry, the agenda pack, and putting together

the meeting minutes afterwards, have you had other contact

with -- had anything to do with these ordinances other than

appearing here today for your deposition?

A. I am not sure -- you mean any input or any

influence?

Q. Sure. Let me see if I can rephrase it.

A. Okay.

Q. And for all of these questions, I don't want to

hear about any conversations or discussions that you had with

Mr. Szymanski or somebody else from the legal office, just so

that you understand, okay?

A. Yes.

Q. Have you, subsequent to the time that these

ordinances were adopted, done anything as it related to these

ordinances?

A. No.

Q. So, for example, as the clerk, have you ever been

asked to -- have you ever retrieved or directed anybody to

retrieve information from the clerk's office as it relates --

A. Pertaining to this matter?

Q. Pertaining to these ordinances or any matter

relating to them?

A. Yes.

Q. What have you done as it relates to these

ordinances?

A. We had a FOIA request for them.

Q. You say you had a FOIA request for the ordinances

themselves?

A. Yes.

Q. For anything else related to the ordinances?

A. No.

Q. Have you ever conducted or had somebody conduct a search for records or for all of the records maintained by the township as it relates to the adoption of these ordinances?

A. No.

Q. Is there a central place that all of these records are maintained as it relates to the adoption of these ordinances?

A. Yes.

Q. Where would that be?

A. The clerk's office.

Q. Any other contact other than the agenda pack,

preparing the minutes, answering the FOIA request, any other

contact with these ordinances?

A. No.

Q. Did you ever have any input in the drafting of

these ordinances?

A. No.

Q. Did you put -- did you provide any information to

the board of trustees or any other department within the

township as it related to adoption of these ordinances?

A. No.

Q. Have you ever been asked to -- strike that.

Other than in an executive session, so other than

in an executive session talking about this case, and I

understand there is one other case that was involved in these

ordinances, but other than that, has the board of trustees

since you have been sitting on it since November had an

opportunity to discuss these ordinances in regular session?

A. No.

Q. Or anything pertaining to these ordinances?

A. No.

Q. As I understand it, you said that you were a

lifelong resident of Van Buren or its immediate area except

for when you were a student?

A. Correct.

Q. When was the first time that you became aware of a

business known as Legg's Lounge?

A. When I started working here.

Q. Which would have been back in 1981?

A. Correct.

Prior to that, as a resident of the community, were you aware of that business?

A. No.

Q. In what capacity, since you have been working for the township, have you had occasion to become aware of that business?

A. For a short period of time I assisted in the public safety office as a clerk typist.

Q. Okay. And while you were a clerk typist in the public safety department, what information was it that you learned?

A. Just that it was a business here and that obviously the police department had contact.

Q. Other than that one time or that time when you

were with the public safety, have you had any other contact

or had reason to know about the business?

A. Do. you mean specific knowledge or just general --

I mean, general --

Q. Let's start with specific.

A. I don't recall specific but I know generally that

it is a business located here, the type of business that they

are.

Q. Okay. Have there been any incidences or problems

that would have caused you -- that that business would have

had to cause you to gain more specific knowledge in any of

the capacities that you have had working for

the township?

A. Unless it was something that made the paper, it

wouldn't be something that I would necessarily have known

about.

Q. So you were never sitting around a board meeting

here talking about various businesses in the community and

some incident that may have caused you to talk about it?

A. No.

Q. Is the clerk's office -- is that the office that

maintains, for example, when people write letters to the city

and things like that? For example, somebody writes the

supervisor something, is the clerk's office the ultimate

repository for that kind of stuff?

A. Sometimes.

Q. Do you know if the clerk's office maintains a

file, for example, on Legg's Lounge?

A. Do I know if we have a file?

Q. Yes.

A. No.

Q. You said that you are a resident of the community?

A. Correct.

Q. As a resident of the community, has that business

caused you any specific problems?

A. Me personally?

Q. Yes.

A. No.

Q. Anybody you know who lives in the township, has it

caused any specific problems to?

A. No.

Q. Do you know the area where Legg's Lounge is located?

A. Yes.

Q. And that's along Michigan Avenue?

A. Correct.

Q. Kind of what was referred to, if I am correct, as the northwest quadrant of the city?

A. Of the township, yes.

Q. Of the township, I apologize. Is that a commercial or residential area over on that part of the township, if you know?

A. Residential.

Q. Are there commercial businesses in that area as well?

A. Yes.

Q. I understand that there is at least a bar in that

area -- another bar?

A. Yes.

Q. I know there is a mobile home park in that area?

A. Correct.

Q. Are there any other types of businesses in that

area?

A. Probably, I can't think of their names but there

are other things up there.

Q. Okay. Are you aware of any specific problems that

that area of the town is experiencing?

A. As far as --

Q. Just in general? Sitting as a member of board of

trustees?

A. Not that I can recall.

Q. Nobody has complained to the board of

trustees

that their property values are going down over there?

A. Not in a public forum.

Q. Nobody has complained that there is a whole lot of

crime going on over there in that area of town?

A. No one has reported anything to me.

Q. Okay.

A. So--

Q. And no one, at least since you have been a member

of board of trustees since November, has brought that matter

to the board of trustees's attention, correct?

A. Correct.

Q. That area of town, is that part of the area of the

township that is experiencing some growth?

A. I don't know.

Q. Did you have any other involvement with the adoption of these ordinances?

A. No.

Q. Have you had any other involvement with -- strike that.

As part of these ordinances, they require certain licensing to take place of adult businesses, were you aware of that?

A. Yes.

Q. Has the clerk's office taken any steps to prepare materials in the event that any of these businesses have to be licensed?

A. I have not done so.

Q. Do you know if there is a previous plan in

place

19 to do so?

20 A. No, I do not.

21 Q. As a clerk, that might be something that was

22 important to know, would you agree, what licenses you may

23 have to issue?

24 A. Yes.

25 Q. Is there an application form for somebody to fill

1 out if they want to license an adult business, in the clerk's

2 office?

3 A. I don't know.

4 Q. Is there anybody in the township other than the

5 lawyer for the township who is responsible for maintaining

any of the files, specifically for Legg's Lounge?

MR. SZYMANSKI: Assumes -- she already testified that there are no specific Legg's Lounge files in the clerks office.

MR. RUBIN: Here, let me see if I can rephrase that question.

Q. (BY MR. RUBIN): Is there anybody at the clerk's office or under either you or somebody working for you who is responsible for maintaining any files as it relates to Legg's Lounge for any purpose? For example, does the building department maintain files of businesses?

A. They maintain an address file.

Q. Okay.

A. Which has building documents -- documents of that

nature. The only other file that I could think of would be

-- the liquor license file would be the only other file that

I know of that would reference them particularly.

Q. Who has the liquor license file?

A. We have those.

Q. Okay. Do you know how many liquor licensed

businesses there are in the township? Actually let me

rephrase that. Do you know how many liquor licensed

establishments licensed to sell alcohol to people sitting

there or at the premises as opposed to a party store where

they can buy them and take them away?

A. I don't know the exact number for that.

Q. Do you have an approximate?

A. Perhaps eight to nine.

Q. Okay. Are those maintained in, for example, a drawer here at the clerk's office?

A. They would be in the same file with the liquor license. There is just a file that has documents we receive from the state.

Q. So you have a file -- liquor license file?

A. Correct.

Q. And whatever documents you get relative to the liquor license goes in that file?

A. Right.

Q. Is there -- I understand there is a township assessor's office?

A. Correct.

Q. Is that overseen by the clerk's office?

A. No.

Q. Who is the township assessor?

25 A. I believe our assessing is actually done by Wayne

1 County, we do have assessment files here.

2 Q. How does one go about reviewing those, if you

3 know?

4 A. Reviewing assessment files?

5 Q. Yes, do they go to the clerk's office, do they go

6 to the treasurer's office, do they go to the assessor's

7 office?

8 A. Well, the clerk's office doesn't have any of the

9 assessor's records, per se, the treasurer's office has tax

10 and assessment information, the assessor's office has the

11 actual field sheets. There is also a computer in the lobby

12 that people can access for information.

Q. So if I wanted to go access information about a particular parcel of property, I could just type it into a computer?

A. Correct.

Q. To your knowledge, has the city -- I am sorry, has the township ever done any studies on the effect of adult entertainment within the township?

A. No.

Q. To your knowledge, has anybody ever taken a look at the property values in the areas immediately around, for example, adult businesses in the township and compared them to any other portion of the township?

A. No.

Q. Do you know what information is, perhaps, in the

ordinance adoption file that you maintain?

A. For this -- for these ordinances?

Q. Yes.

A. There would be a first reading ordinance, a copy

of the publication, a copy of the synopsis.

Q. Okay. For example, do you know if this is a big

or a little file?

A. It is not in a separate file, it is just with all

of the other ordinances.

Q. Okay. Do you know -- would it be -- do you know

whether it would be bigger or smaller than --

A. The whole file?

Q. Yes, than perhaps the pack of police reports that

Mr. Szymanski so kindly provided me today? Would it be this

big or smaller?

MR. SZYMANSKI: No, no, it was provided to you before.

MR. RUBIN: It was in my office today, I apologize.

THE WITNESS: The entire file would be larger than that.

Q. (BY MR. RUBIN) : Okay. Do you know what information is in there specifically other than the ordinance, the first reading, the publication?

A. Perhaps the memo to the board, I am not sure off

the top of my head what else would be there.

Q. Okay.

MR. RUBIN: Thank you. I have nothing further.

MR. SZYMANSKI: No questions.

(Whereupon deposition was concluded at about 12:01 p.m.)

CERTIFICATE OF REPORTER

STATE OF MICHIGAN)
SS)
COUNTY OF OAKLAND)

I hereby certify that on the date and at the place hereinbefore set forth, I reported stenographically the proceedings held in the matter hereinbefore set forth, and that the testimony so recorded was subsequently transcribed by me with the use of computer-aided transcription under my direction and supervision, and that the foregoing is a full, true and accurate transcript of my original stenotype notes.

DATE: 7-10-01 /S/
Kelly Forfar
(CSR-3618)
Certified Reporter

Notary Public:
County of Oakland
My Commission Expires:
January 1, 2002